

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
)	
v.)	ID#: 0608025757
)	
LEROY COOK, SR.,)	
Defendant.)	

ORDER

**Upon Defendant's Second Motion for Postconviction Relief –
SUMMARILY DISMISSED**

1. On April 13, 2010, after the denial of Defendant's first motion for postconviction relief¹ was affirmed on February 26, 2010,² Defendant filed this, his second motion for postconviction relief.

2. The Prothonotary properly referred the motion for preliminary review.³

3. After preliminary review by examination of the motion and the

¹ *State v. Cook*, Del. Super., Cr. ID No. 0608025757, Silverman, J. (May 20, 2009).

² *Cook v. State*, 2010 WL 682545 (Del. Supr. Feb. 26, 2010). (The March 16, 2010 mandate was received and docketed on March 18, 2010.)

³ Super. Ct. Crim. R. 61(d)(1).

file's contents, it appears the motion is subject to summary dismissal.⁴

4. Instead of going to trial on January 8, 2008, Defendant pleaded guilty to rape second degree, for which he received a long prison sentence. Defendant did not file a direct appeal; on October 29, 2008, Defendant filed his first motion for postconviction relief, which the court denied on May 20, 2009.⁵ The denial came on an expanded record.⁶ As mentioned, the denial was affirmed.⁷

5. Defendant's first motion for postconviction relief presented several issues, including claims of ineffective assistance of counsel, judicial misconduct and prosecutorial misconduct. Defendant also alleged that the indictment was untimely and otherwise defective.

6. The first motion for postconviction relief was summarily dismissed, for the most part, on procedural grounds. By pleading guilty, Defendant waived defects leading to his plea. Moreover, by failing to file a direct appeal, he procedurally defaulted his claims, as well.⁸ The court, however, did substantially consider Defendant's ineffective assistance and defective indictment claims.

⁴ *Id.*; Super. Ct. Crim. R. 61(d)(4).

⁵ *State v. Cook*, Del. Super., Cr. ID No. 0608025757, Silverman, J. (May 20, 2009).

⁶ Super. Ct. Crim. R. 61(g).

⁷ *Cook v. State*, 2010 WL 682545 (Del. Supr. Feb. 26, 2010).

⁸ Super. Ct. Crim. R. 61(i)(3).

7. Although the second motion for postconviction relief is not a mirror image of the first motion, it is close. Defendant again alleges ineffective assistance of counsel and defects in the indictment. In essence, Defendant is now seeking to be excused from his original procedural defaults by invoking the colorable claim that there was a miscarriage of justice exception to Rule 61's procedural bars.⁹

8. Although the second motion for postconviction relief rambles, it boils down to Defendant's premise that had he known the indictment was defective, he would not have pleaded guilty. From that initial premise, Defendant argues that his lawyer was ineffective for not having challenged the ineffective indictment and for not having told Defendant that the indictment was defective. Defendant also alleges, without support, that he was in prison when the child was raped. (As to the latter, it should be recalled that the victim's accusation was corroborated by Defendant's admissions that he was, in fact, guilty, and by other evidence, especially DNA testing of the baby the victim conceived by Defendant.)

9. The court previously held that the indictment was lawful. Thus, the claim is barred. Defendant has not come close to establishing a constitutional violation or anything approaching a miscarriage of justice. To the contrary, Defendant's voluntary and intelligent guilty plea, to a crime he said he committed,

⁹ Super. Ct. Crim. R. 61(i)(5).

continues to appear to have been in his best interest and, in any event, it was constitutional and just. Thus, it plainly appears from the motion and record that Defendant is not entitled to relief.

For the foregoing reasons, Defendant's Second Motion for Postconviction Relief is **SUMMARILY DISMISSED**. The Prothonotary shall notify Defendant.

IT IS SO ORDERED.

Date: April 21, 2010 /s/ Fred S. Silverman
Judge

cc: Prothonotary (Criminal Division)
Renee L. Hrivnak, Deputy Attorney General
Leroy Cook, Sr., Defendant